IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 699 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GORDHANBHAI MOHANBHAI SOLANKI - Appellant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR BP DALAL for Appellant
MR RC KODEKAR APP for Respondent – State of Gujarat

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 11/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. Instant Criminal Appeal under Section 374 of the Code of Criminal Procedure ('the Code' for short) is directed against the judgment and order dated 22.6.2001 rendered in Sessions Case No.287 of 1999 by the learned Additional Sessions Judge, Nadiad, District Kheda by which the appellant ('the accused' for short) has been convicted for the offences punishable under Sections 306 and 498-A of the Indian Penal Code ('IPC' for short) and sentenced to suffer S.I. for ten years and fine of Rs.1,000/- i.d., S.I. for further period of three months for the offence punishable under Section 306 of the IPC and S.I. for three years and fine of Rs.1,000/- i.d., S.I. for further

period of three months for the offence punishable under Section 498-A of the IPC.

2. The brief facts giving rise to instant appeal are as under:

2.1. As per the prosecution case, marriage of the accused with deceased Kantaben had taken place about 6 years prior to the incident and since then she was staying with the accused at village Meholel of Taluka Nadiad, District Kheda. She used to visit her father's house at Surashamal. Mother of Kantaben had died before her marriage.

2.2. As per the prosecution case, the accused had illicit relations with one woman of village Maholel and when Kantaben used to rebuke the accused for said relations, she was given physical and mental tortures by the accused. Out of the wedlock, a female child was born to Kantaben who was aged about two years at the time of the incident. It is the prosecution case that Kantaben used to talk about her complaint to her

father and her aunt whenever she was going to her father's house.

2.3. It is further case of the prosecution that Kantaben had left the house of the accused one month prior to the incident and had gone to Surashamal at her father's house and at that time she had again told to her father and aunt that the accused was not giving up the illicit relations with the woman and that he was beating her whenever she used to complain about it to the accused. Kantaben had stayed at her father's place and ten days thereafter the accused came to call her back. At that time, Udesing Ichchhabhai Zala, father of Kantaben, had rebuked the accused and the accused had promised that he would not repeat it in future and, therefore, Kantaben was sent with the accused back to Maholel.

2.4. As per the case of the prosecution, on the day of the incident i.e., 29.1.1999, Kantaben had gone to Surashamal at about 11 A.M. since a baby in their relations had expired and at that

time also she had informed her father and aunt that the accused was still keeping illicit relations with the said woman and was beating her when she was making complaint about it and that he was not talking with her. She had returned at about 2 P.M. on the same day from Surashamal and thereafter at about 9 P.M. on the same day, Udesing received a telephonic message from Maholel that his daughter Kantaben was burnt and she was taken to the hospital at Nadiad. On receiving this information, Udesing along with his brother, daughter, etc., had gone to Nadiad in a motor car and on making inquiry in the hospitals at Nadiad, no trace of his daughter Kantaben was found and, therefore, he had made a telephone call to Maholel. At that time he was informed that his daughter was well and that he should come to Maholel. Accordingly, Udesing with others went to Maholel and reached there in the same night. At that time Kantaben was found dead and was lying in her house and she was having burn injuries on her body with black spots. When Udesing inquired about it, he came to know from

some near-about persons that Kantaben had received burn injuries by way of accident of stove flames. When Udesing inquired from the mother-in-law of Kantaben, he was informed that Kantaben burnt herself by closing the doors.

2.5. Thereafter Udesing went back to Surashamal and on the next day i.e., on 30.1.1999 lodged his complaint at about 4.15 A.M. at Chakalasi Police Station against the accused. Nathusinh Punjusinh Rathod, PSI had recorded the said complaint and on the basis of the said complaint was registered against the accused. During the course of investigation, statements of witnesses were recorded, panchnama of the scene of offence was drawn, dead body of Kantaben was sent to hospital for autopsy and on receipt of the autopsy report and as incriminating evidence was found against the accused, he was charge-sheeted in the court of the learned Chief Judicial Magistrate, Kheda at Nadiad for commission of the offences punishable under Sections 306 and 498-A of the IPC.

2.6. As the offence punishable under Section 306 of the IPC was exclusively triable by a Court of Sessions, the learned Chief Judicial Magistrate committed the case to the Court of Sessions of Kheda District at Nadiad.

2.7. The learned Additional Sessions Judge, Kheda at Nadiad, to whom the case is made over for trial, framed charge against the accused for commission of the offences punishable under Sections 306 and 498-A of the IPC which was read over and explained and him. As the accused pleaded not guilty to the charge and claimed to be tried, he was put to trial in Sessions Case No.287 of 1999.

2.8. To prove the culpability of the accused, the prosecution has examined in all six witnesses and also relied upon a number of documents, details of which have been described in para 3 of the impugned judgment and order.

2.9. After recording of the evidence of the prosecution witnesses was over, the learned Additional Sessions Judge explained to the accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement under Section 313 of the Code. In his further statement, the accused has denied the case of the prosecution and stated that false complaint has been filed against him. He has also filed a written statement wherein also he has reiterated the same thing.

2.10. On appreciation, evaluation, analysis and close scrutiny of the evidence adduced by the prosecution, the learned trial Judge has held that complicity of the accused for commission of the offences punishable under Sections 306 and 498-A of the IPC has been proved. It is also proved by the prosecution that the accused was having illicit relations with another woman and on being rebuked by deceased Kantaben, she was subjected to mental and physical cruelty by the

accused which led her to take the extreme step to put an end to her life and, therefore, the accused abetted her to commit suicide and the deceased was also subjected to mental and physical cruelty at the hands of the accused and hence the learned trial Judge has held that the accused is guilty of the offences with which he was charged and accordingly convicted him for the offences punishable under sections 306 and 498-A of the IPC and sentenced him to suffer simple imprisonment about which reference is made in the earlier paragraph of this judgment, which has given rise to instant appeal at the instance of the accused.

3. At the time of final hearing of this appeal, Mr. B.P. Dalal, learned advocate of the appellant, has stated that he does not press this appeal on merits and his submissions are confined only to the quantum of punishment. According to him, the sentence of S.I. for ten years imposed on the accused is harsh and does not commensurate with the guilt of the accused. Besides this, his

submission is that by now the accused has already undergone imprisonment of more than seven years and looking to the mitigating circumstances which have been highlighted by Mohanbhai Raghabhai Solanki, father of the accused, in his affidavit a lenient view may be taken by showing mercy on the accused. He, therefore, urged that this appeal may be allowed by imposing the sentence which the accused has already undergone as substantive sentence for commission of offence under section 306 of the IPC by modifying the sentence imposed by the learned trial Judge. He, therefore, urged that the appeal may be allowed by reducing the sentence showing sympathy on the accused.

4. Mr. RC Kodekar, learned APP for the respondent - State of Gujarat, has submitted that so far as the offence punishable under section 306 of IPC is concerned, it is punishable with imprisonment which may extent to ten years and the learned trial Judge has imposed the maximum punishment. However, looking to the mitigating

circumstances which have been highlighted by Mohanbhai Raghabhai Solanki, father of the accused in his affidavit, appropriate orders of reduction of sentence may be passed.

5. This Court has considered the submissions advanced by Mr. BP Dalal, learned advocate of the appellant and Mr. RC Kodekar, learned APP for the respondent – State of Gujarat. We have also gone through the impugned judgment and order, evidence on record, affidavit sworn by Mohanbhai Raghabhai Solanki, father of the accused and also the report dated 10.9.2006 sent by PSI, Chakalasi Police Station to the Office of the Public Prosecutor, High Court of Gujarat, Ahmedabad.

6. Mohanbhai Raghabhai Solanki, father of the accused, in his affidavit has shown the following mitigating circumstances for reduction of sentence:

(i) He is aged 68 years and is staying with his wife Sambaben and his grand-daughter, Sapna,

daughter of the accused, aged about 7 years.

(ii) He and his wife are quite old and infirm and weak by health and their eye sight is weak.

(iii) The accsued remained in jail as under trial prisoner for one year, ten months and 22 days.

(iv) After conviction and sentence he has already undergone sentence of 5 years, two months and 20 days. Thus, in all, he has undergone sentence of seven years, one month and 12 days.

(v) The accused was taking care of his parents and was also looking after cultivation work of three vighas of land by residing with them at Meholel before the incident. He is unable to do any cultivation on account of old age and weak eye sight.

(vi) His kachchha Mud House with country naliya

had fallen down and was demolished in the heavy rains during the month of June last year and they are unable to make reconstruction of the house on account of non-availability of sufficient funds and at present he and his wife and grand-daughter Sapna are residing in cattle-shed near his house.

(vii) Sapna, daughter of the accused, has passed Second Gujarati Class and is now studying in Third Standard and she was also victim of the incident as she had received burn injuries on her head and other parts of body for which she was required to take long treatment for many days and there is no one to take care of her except him and his wife who are very old and infirm.

(viii) Since last two years the cultivation work of his field could not be done and no income from agriculture was received.

(ix)His elder son, Gulabsinh Mohanbhai Solanki, is permanently residing at Anand in the staff

quarter of Taluka Panchayat for the purposes of his service and as such there is no one at present to look after them and to take their day-to-day care since he visits them at Maholel only on holidays.

(x) There is no history of any one of his family being involved in any criminal offences or disputes except the present one and that in village Maholel his family is considered by the villagers as peace loving persons.

7. On the date of hearing of this appeal i.e., 8.9.2006, we had asked Mr. Kodekar, learned APP to inquire as to who is looking after Sapna, daughter of the accused. In compliance of our oral direction, Mr. Kodekar has called for the report from PSI, Chakalasi Police station and the PSI, Chakalasi police station has, vide his report dated 10.9.2006 addressed to the office of the public Prospector, High Court of Gujarat, Ahmedabad, reported, inter alia, that Sapna is at present staying with the father of the accused

who is looking after her. The report further stipulates that father of the accused is aged about 70 years and there is nobody to look after him and his wife.

8. In view of the aforesaid mitigating circumstances and the report of the PSI, Chakalasi Police station and since there is nobody to take care of minor Sapna who is now aged about eight years and more particularly when the accused has already undergone sentence of more than seven years, we are of the opinion that the sentence of S.I. for ten years imposed on the accused for commission of offence under section 306 of IPC deserves to be reduced by imposing the sentence of already undergone by him as substantive sentence. But the punishment imposed for the commission of offence under section 498-A of the IPC deserves to be maintained.

9. For the foregoing reasons, the appeal succeeds in part qua sentence only. While maintaining the order of conviction, the sentence

imposed on the accused for commission of offence punishable under section 306 of IPC by the learned trial Judge is reduced and the period of sentence already undergone by him is treated to be the substantive sentence for the said offence. So far as the sentence imposed for commission of offence punishable under section 498-A is concerned, the same is confirmed. As both the sentences are ordered to run concurrently and the accused has already undergone SI for more than seven years, he shall be set at liberty forthwith if he is not required in connection with any other case.

10. Affidavit sworn by Mohanbhai Raghabhai Solanki, father of the accused, and the report dated 10.9.2006 sent by the PSI, Chakalasi Police station to the office of the Public Prosecutor, High court of Gujarat, Ahmedabad, are ordered to be retained on the record of the case.

(A.M. Kapadia, J.)

(K.A. Puj, J.)

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